

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal No. 08 MJ 2384 PCL
v. Plaintiff,)
Wilmer Toledo-Ventura,) DETENTION ORDER
Defendant.)

A. **Order For Detention**

After conducting a detention hearing pursuant to 18 U.S.C. §3142(f) of the Bail Reform Act, the Court orders the above named defendant detained pursuant to 18 U.S.C. §3142(e) and (i).

B. **Statement of Reasons For the Detention**

The Court orders the defendant's detention because it finds:

By a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required.

By clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

C. **Findings of Fact**

The Court's findings are based on the evidence which was presented in Court and that which was contained in the Pretrial Services Report, and includes the following:

(1) Nature and circumstances of the offense charged:

(a) The crime:

8 USC 1326 Attempted Entry After Deportation

is a serious crime and carries a maximum penalty of 2 years

(b) The offense is a crime of violence.

(c) The offense involves a narcotic drug.

(d) The offense involves a large amount of controlled substances, to wit:

1 _____
2 (2) The weight of the evidence against the defendant is high but is the least significant
3 factor.

4 (3) The history and characteristics of the defendant including:

5 (a) General Factors:

6 _____ The defendant appears to have a mental condition which may affect
7 whether the defendant will appear.

8 _____ The defendant has no family ties in the area.

9 _____ The defendant has no steady employment.

10 The defendant has no substantial financial resources or bond proposals.

11 _____ The defendant is not a long time resident of the community.

12 The defendant does not have any significant community ties.

13 _____ Past conduct of the defendant: _____
14 _____

15 _____ The defendant has a history relating to drug abuse.

16 _____ The defendant has a history relating to alcohol abuse.

17 The defendant has a significant prior criminal record.

18 _____ The defendant has a prior record of failure to appear at court proceed-
19 ings.

20 _____ The defendant has a prior record of probation, parole or supervised
21 release violations and/or revocations.

22 _____ (b) At the time of the current arrest, the defendant was on:

23 _____ Probation

24 _____ Parole

25 _____ Release pending trial, sentence, appeal or completion of sentence.

26 _____ (c) Other Factors:

27 The defendant is an illegal alien and is subject to deportation.

1 _____ The defendant is a legal alien and will be subject to deportation if
2 convicted.

3 _____ Other: _____
4
5

6 _____ (4) The nature and seriousness of the danger posed by the defendant's release are as
7 follows: _____
8

9 _____ (5) Rebuttable Presumptions
10

11 In determining that the defendant should be detained, the Court also relied on the
12 following rebuttable presumption(s) contained in 18 U.S.C. §3142(e) which the
13 Court finds the defendant has not rebutted.

14 _____ (a) That no condition or combination of conditions will reasonably assure the
15 appearance of the defendant as required and the safety of any other person and the
16 community because the Court finds that the crime involves:

17 _____ (A) A crime of violence; or

18 _____ (B) An offense for which the maximum penalty is life imprisonment or
19 death; or

20 _____ (C) A controlled substance violation which has a maximum penalty of 10
21 years or more; or,

22 _____ (D) A felony after the defendant had been convicted of two or more prior
23 offenses described in (A) through (C) above, and the defendant has a prior
24 conviction for one of the crimes mentioned in (A) through (C) above which is less
25 than five years old and which was committed while the defendant was on pretrial
26 release,

27 _____ (E) A felony that is not otherwise a crime of violence that involves a
28 minor victim or that involves the possession or use of a firearm or destructive
device, or any other dangerous weapon, or involves a failure to register under §
2250 of Title 18, United States Code.

1 (b) That no condition or combination of conditions will reasonably assure the
2 appearance of the defendant as required and the safety of the community because
3 the Court finds that there is probable cause to believe:

4 (A) That the defendant has committed a controlled substance violation
5 which has a maximum penalty of 10 years or more.

6 (B) That the defendant has committed an offense under 18 U.S.C.
7 §924(c) (uses or carries a firearm during and in relation to any crime of violence,
8 including a crime of violence, which provides for an enhanced punishment if
9 committed by the use of a deadly or dangerous weapon or device).

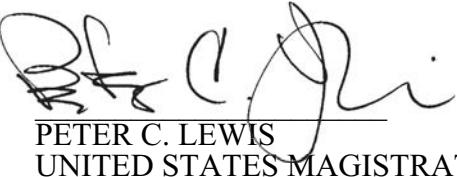
10 D. **Additional Directives**

11 IT IS ORDERED that the defendant be committed to the custody of the Attorney General or his
12 designated representative for confinement in a corrections facility separate, to the extent practicable,
13 from persons awaiting or serving sentences or being held in custody pending appeal. The defendant
14 shall be afforded a reasonable opportunity for private consultation with his counsel.

15 While in custody, on order of a court of the United States or on request of an attorney for the
16 government, the person in charge of the corrections facility shall deliver the defendant to a United States
17 Marshal for the purpose of an appearance in connection with a court proceeding or any other appearance
18 stipulated to by defense and Government counsel.

19 IT IS SO ORDERED.

20 DATED: August 7, 2008

21 
22 PETER C. LEWIS

23 UNITED STATES MAGISTRATE JUDGE